

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NATHANIEL J. HARBIN,

Plaintiff,

14-CV-857S

-v-

NANCY A. BERRYHILL, *Acting
Commissioner of Social Security,*

Defendant.

ORDER

Plaintiff having filed a Motion for Attorney's Fees (Docket No. 17) pursuant to 42 U.S.C. § 406(b), and upon consideration of all of the papers submitted herein, the Court finds that the amount requested by Plaintiff does not exceed the statutory 25% cap, that there was no fraud or overreaching on Plaintiff's counsel's part, that the amount requested is not so large as to be a windfall to the attorney, and that the fee request is otherwise reasonable.

The Court further notes that the Defendant has not opposed Plaintiff's attorney fee request. In addition, Plaintiff's counsel states that, though the Court previously awarded \$6,301 in attorney's fees under the Equal Access to Justice Act ("EAJA"), he did not receive any of these EAJA fees because they were applied through the Treasury Offset Program to a non-tax federal debt that Plaintiff owed. See *Wells v. Bowen*, 855 F.2d 37, 42 (2d Cir. 1988) ("*Wells I*") (if attorney fees are or have been awarded under EAJA, 28 U.S.C. § 2412, for the same court services, counsel is required to give the smaller of the EAJA or the 406(b) award to the plaintiff); see also *Boissiere v. Astrue*, Civ. No. 09-2081, 2011 WL 1045170, at *4 (N.D. Cal. Mar. 22, 2011) (where an EAJA award was not paid to counsel, "no offset is required because the plain language of the [EAJA] requires a

refund only where an attorney has '*received* fees for the same work')(emphasis in original)(quoting 28 U.S.C. § 2412).

Accordingly,

IT HEREBY IS ORDERED, that Plaintiff's Motion for Attorney's Fees (Docket No. 17) is GRANTED.

FURTHER, that Plaintiff is awarded attorney's fees under 42 U.S.C. § 406(b) in the amount of \$15,455.75. Defendant is ordered to pay that amount out of the funds being withheld from Plaintiff's past due benefits directly to the Plaintiff's counsel, Kenneth R. Hiller.

SO ORDERED.

Dated: November 2, 2017
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge